

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

AUG 27 2014

D. MARK JONES, CLERK
BY _____
DEPUTY CLERK

Gainer M. Waldbillig (Utah Bar No. 4433)
gmw@wlaw.net
Katy R. M. Strand (Utah Bar No. 13874)
krs@wlaw.net
W | LAW
405 South Main Street, Suite 930
Salt Lake City, Utah 84111
(801) 532-9300

David G. Concannon (Pa. Bar No. 61483; N.J. Bar No. 008511991)
david@davidconcannon.com
Matthew T. Charles (Pa. Bar No. 207005; N.J. Bar No. 032032007)
matt@davidconcannon.com
LAW OFFICES OF DAVID G. CONCANNON, LLC
200 Eagle Road, Suite 116
Wayne, Pennsylvania 19087
(610) 293-8084

Attorneys for Blue Water Scuba, Lowell Huber, and Corbett Douglas

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, NORTHERN DIVISION**

CHRISTOPHER JOSEPH TUVELL, SHERRY
LYNN TUVELL, individually and as the heirs of
David Christopher Tuvell, and THE ESTATE
OF DAVID CHRISTOPHER TUVELL,

Plaintiffs,

v.

BOY SCOUTS OF AMERICA, PROFESSIONAL
ASSOCIATION OF DIVE INSTRUCTORS,
BLUE WATER SCUBA, LOWELL HUBER,
CORBETT DOUGLAS, and GREAT SALT
LAKE COUNCIL, INC., BOY SCOUTS OF
AMERICA,

Defendants,

v.

KIM M. LaMOTTE-MALONE M.D., LaMOTTE
PEDIATRICS, LLP, doing business as Anthem
Hills Pediatrics, KIM LaMOTTE-MALONE
M.D. PROF CORP., M.P., a minor; MICHAEL
PERRY, and BRIAN K. SHRAWDER,

ORDER

**No. 1:12CV00128 DB
Judge Dee Benson**

Third-Party Defendants.

The Motion by Defendants Blue Water Scuba of Logan, Lowell Huber and Corbett Douglas for Sanctions Against Plaintiffs Christopher Tuvell and Sherry Tuvell, Defendant Professional Association of Scuba Instructors ("PADI") and their Counsel, pursuant to 28 U.S.C. § 1927 (Docket Number 111), came before the Court for oral argument on April 23, 2014. Defendants Blue Water Scuba, Lowell Huber and Corbett Douglas (hereafter "Blue Water Defendants") were represented by David G. Concannon and Gainer M. Waldbillig; Plaintiffs were represented by Alton Hall and Robert Gilchrist; Defendants Boy Scouts of America and Great Salt Lake Council, Inc. and Third-Party Defendant Michael Perry were represented by Michael Skolnick; Defendant PADI was represented by Roger Bullock; and Third-Party Defendants Kim M. LaMotte-Malone, M.D., LaMotte Pediatrics LLP, d/b/a Anthem Hills Pediatrics, Kim LaMotte-Malone, M.D. Prof Corp and Brian K. Shrawder were represented by Amanda Rosenthal; and Third-Party M.P., a minor, was represented by Eric Davenport. The Court, having considered the motion and memoranda submitted for and in opposition to the motion, and having heard oral argument, and for good cause shown, ruled from the bench as follows:

IT IS ORDERED that:

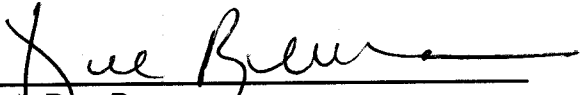
1. The Blue Water Defendants' Motion for Sanctions is granted. The Court finds that Plaintiffs, PADI and their Counsel, have unnecessarily multiplied the proceedings by entering into a secret settlement on March 11, 2013, in which PADI settled all claims asserted by the Plaintiffs, and then misleading the parties and the Court by failing to immediately disclose the settlement but, instead, colluding to file an Amended Complaint that withdrew some, but not all, of the settled claims against PADI.

Plaintiffs and PADI have admitted that PADI insisted that it remain a party to the case, even after PADI and the Plaintiffs had reached a complete settlement of all claims, so PADI could assist the Plaintiffs in proving their claims against the Blue Water Defendants. The filing of this Amended Complaint set off a series of answers, cross-claims and third-party claims that were unnecessary.

2. Because PADI and the Plaintiffs have improperly filed the Amended Complaint, PADI's Answer and Cross-Claims to the Amended Complaint that misrepresented to the Court and other parties that the case in controversy was still active, the Amended Complaint (attachment to Docket Number 54) and all answers, cross claims, and third-party complaints filed in response to the Amended Complaint are hereby stricken.
3. Blue Water Defendants shall file a responsive pleading to Plaintiffs' original Complaint (Docket Number 1) on or before May 13, 2014.
4. As a result of the conduct of Plaintiffs, PADI and their Counsel, as described herein, the Court awards sanctions to the Blue Water Defendants in the amount of \$2,000. These sanctions shall be paid by counsel for Plaintiffs and PADI, jointly and/or severally. The Court determines the amount to be reasonable to compensate the Blue Water Defendants for the actions they were forced to take to respond to the Amended Complaint and cross-claims thereunder.
5. The Protective Order suggested by Plaintiffs and PADI to maintain the confidentiality of their Settlement Agreement (Docket Number 99) is hereby vacated and shall be replaced by a modified Protective Order wherein the only confidential portion of the Settlement Agreement between PADI and Plaintiffs is the dollar amount paid by PADI to settle the Plaintiffs' claims against PADI.
6. The remaining parties shall submit a revised scheduling order to the Court by May 13, 2014.

DATED this 26th day of August, 2014.

United States District Court



Hon. Dee Benson
United States District Judge

APPROVED AS TO FORM:

By: _____

Robert G. Gilchrist
EISENBERG GILCHRIST
Alton J. Hall, Jr.
DELISE & HALL
Attorneys for Plaintiffs

APPROVED AS TO FORM:

By: _____

Michael F. Skolnick
Samuel A. Goble
KIPP & CHRISTIAN
*Attorneys for Boy Scouts of America, Bear
Lake Boy Scout Aquatic Camp,
Professional Association of Dive
Instructors, and Great Salt Lake Council,
Inc., Boy Scouts of America and Michael
Perry*

APPROVED AS TO FORM:

By: _____

Roger H. Bullock
S. Spencer Brown
STRONG & HANNI
Mark A. Hruska
SCHWARTZ LAW GROUP
*Attorneys for Professional Association of
Dive Instructors*

APPROVED AS TO FORM:

By: _____

Eric K. Davenport
Garrett A. Walkder
SMITH & GLAUSER P.C.
Attorneys for Third-Party Defendant M.P

APPROVED AS TO FORM:

By: _____

Jaryl Rencher
Michael Collins
STUCKI, STEEL & RENCHER
Patricia Egan Daehnke
Amanda E. Rosenthal
BONNE, BRIDGES, MULLER, O'KEEFE &
NICHOLS
*Attorneys for Third-Party Defendants Kim
M. LaMotte-Malone, M.D., LaMotte
Pediatrics, LLP, d/b/a Anthem Hills
Pediatrics, Kim LaMotte-Malone M.D.
Professional Corp, and Brian K.
Schrawder*